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July 11, 2012

BY ECF

Hon. Carol B. Amon
Chief Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Anthony Calabrese
12 Cr 50 (CBA)

Dear Chief Judge Amon:

This letter is submitted on behalf of defendant Anthony Calabrese in anticipation of his sentencing before Your Honor at 10:30 a.m. on August 3, 2012.

After extensive negotiations with the government, Mr. Calabrese pled guilty to Count Three of the Indictment which charged him with participating in a conspiracy to collect an unlawful gambling debt, a Class C felony. The parties estimate of Mr. Calabrese's total offense level under the U.S. Sentencing Guidelines is a level 13 in the Plea Agreement. This estimate is based upon the following calculation: a base offense level of 19; minus 4 levels for being a minimal participant; minus 2 levels for acceptance of responsibility. Because Mr. Calabrese is in Criminal

History Category I, this would place him within the 12-18 month advisory imprisonment range. If Mr. Calabrese receives an additional 1 level reduction for participating in the global disposition, his total offense level would be 12, placing him within the 10-16 month imprisonment range. In either case, however, Mr. Calabrese is within Zone C of the Sentencing Table, where a split sentence consisting of 5 or 6 months imprisonment, to be followed by community confinement or home detention of the same duration and a term of supervised release, is authorized by the Guidelines. In accordance with the terms of the negotiated Plea Agreement, the government will not oppose a sentence at the low end of the applicable prison range, but, rather, take no position.

I have reviewed the Presentence Investigation Report (“PSR”). The Sentencing Guidelines calculation in the Plea Agreement and the PSR is the same. However, the Probation Department has also identified Mr. Calabrese’s physical condition as a factor that may warrant a departure below the applicable Guidelines imprisonment range. See PSR at paragraph 90. Indeed, the Probation Department has acknowledged in the PSR that an alternative to incarceration may be an “efficient, less costly alternative” based upon the particular facts presented by Mr. Calabrese’s case. Id.

Because of Mr. Calabrese’s physical condition, I am respectfully asking Your Honor to sentence him to an alternative to incarceration. Namely, probation with a special condition requiring a period of community or home confinement. As Your Honor is no doubt well aware, a downward departure is no longer necessary to reach this result as the Guidelines are no longer mandatory. And, I respectfully submit that an alternative to incarceration would also constitute a “reasonable”

under Title 18 USC 3553(a).¹

As confirmed by the Probation Department in the PSR, Mr. Calabrese suffers from Multiple Sclerosis, an incurable autoimmune disease. See PSR at paragraph 60. He is presently under the care of three separate doctors for this disease: a primary care physician, a neurologist, and a pain management specialist. And, he is treated by them all on a regular basis. Id.

As Mr. Calabrese's primary care physician, Dr. Barry Gordon, stated in the attached letter to Your Honor, Multiple Sclerosis ("MS") is a chronic debilitating disease which affects Mr. Calabrese's brain and spinal cord, and requires specialized and immediate medical care. As Dr. Gordon explained:

MS is caused by damage to the myelin sheath, the protective covering that surrounds nerve cells, an inflammatory, auto-immune phenomenon. When this nerve covering is damaged, nerve impulses are slowed down or stopped. Repeated attacks of inflammation can occur along any area of the brain, optic nerve or spinal cord.

The symptoms of MS vary because the location and severity of each attack can be different. Attacks can last for days, weeks, or even months and stress is known to trigger or worsen the attacks.

¹ In Gall v. United States, 128 S.Ct. 595, 602 (2007), the U.S. Supreme Court emphasized that 3553(a) specifically "directs judges to consider sentences other than imprisonment." And, that a probationary sentence can be structured to amount to a "substantial restriction of freedom" and meet all of the purposes of sentencing. In Gall, the Supreme Court upheld as "reasonable" under 3553(a), a sentence of probation imposed upon defendant Brian Michael Gall, where he pled guilty to participating in an enterprise that distributed ecstasy throughout the community, and the applicable advisory Guideline imprisonment range in his case was 30-37 months.

In the early [stages of the] disease, most people return to normal or near-normal function between attacks. However, as time passes there is a greater loss of function between attacks and may eventually require a wheelchair....

Mr. Calabrese presently suffers from a number of the[] symptoms [of MS], including numbness on the left side of his body, pain in his back and legs, tingling in his legs and feet, problems walking, and blurred vision. Due to the medical care he presently receives, however, he is ambulatory and able to function.

While there is no known cure for MS, there are treatments available to treat attacks, modify the course of the disease and treat the symptoms.

In the past, Mr. Calabrese has suffered from attacks so severe that he required hospitalization and intravenous cortisone. These treatments limit the severity of those attacks.

Medications used to slow the progression of MS are taken on a long term basis, including Interferons such as Rebif, which Mr. Calabrese presently self-injects three times per week. Mr. Calabrese also takes prescribed medication, Oxycodone, each day to help manage the constant pain. He is also prescribed Xanax to help him sleep.

Mr. Calabrese undergoes physical therapy regularly, including a rigorous planned exercise program each day, to modify the course of the disease and treat the symptoms.

It is also essential to Mr. Calabrese's well-being that he have good nutrition and enough rest and relaxation, and that he avoid stress, fatigue and illness at all cost.

Mr. Calabrese will not likely receive comparable medical care and physical therapy in a prison setting. This is cause for concern, especially since a loss of bodily function can be irreversible and lead to life in a wheelchair.

See letter of Barry Gordon, M.D., dated May 10, 2012, attached hereto.

I have also attached hereto for Your Honor's review, an additional letter, from the pain management specialist treating Mr. Calabrese, Christopher M. Perez, M.D.. Dr. Perez, too, has provided Your Honor with his concern that Mr. Calabrese will not receive comparable medical care in a prison environment. And, that this could result in permanent and irreversible neurological loss and functional impairment.

Finally, I have attached letters to Your Honor from Mr. Calabrese's wife, Andrea, and the eldest of his four children, his daughter, Gionna, seeking leniency on his behalf. Mr. Calabrese is, by all accounts, a wonderful husband and father, and he possesses other redeeming qualities.

In sum, the offense of conviction, the agreement to collect an unlawful gambling debt, has no element of violence, actual or threatened. And, Mr. Calabrese had a minimal role in this offense. This, coupled with his low advisory Guidelines imprisonment range, lack of a prior felony criminal record, and physical condition, I respectfully submit, weigh in favor of a non-custodial sentence under the 3553(a) factors.

For all the foregoing reasons, I am respectfully asking Your Honor to sentence Mr. Calabrese to an alternative to incarceration here.

Respectfully submitted,

/JRF/

James R. Froccaro, Jr.

JRF:tp
Encls.

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STATEN ISLAND, NEW YORK 10304
—
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May 10, 2012

Honorable Carol B. Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Anthony Calabrese

Dear Chief Judge Amon,

I am Anthony Calabrese's primary care physician. Mr. Calabrese suffers from MS (multiple sclerosis), a chronic debilitating disease which affects his brain and spinal cord.

MS is caused by damage to the myelin sheath, the protective covering that surrounds nerve cells, an inflammatory, auto-immune phenomenon. When this nerve covering is damaged, nerve impulses are slowed down or stopped. Repeated attacks of inflammation can occur along any area of the brain, optic nerve or spinal cord.

The symptoms of MS vary because the location and severity of each attack can be different. Attacks can last for days, weeks, or even months and stress is known to trigger or worsen the attacks.

In the early disease most people return to normal or near-normal function between attacks. However, as time passes there is a greater loss of function between attacks and may eventually require a wheelchair.

Muscle symptoms include loss of balance, spasms, numbness or abnormal sensation in any area, problems with walking and coordination, weakness and tremors in arms and legs, and possibly eventual paralysis. Bowel and bladder symptoms include constipation and stool leakage, difficulty urinating and incontinence. Eye

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symptoms include double vision, uncontrollable rapid eye movement and vision loss usually affecting one eye at a time. Speech and swallowing symptoms include

slurred speech and trouble chewing and swallowing. Numbness, tingling or pain includes facial pain, tingling, crawling or burning feeling in the arms and legs. Other brain and nerve symptoms include decreased attention span, poor judgment and memory loss, difficulty reasoning and solving problems, depression or feelings of sadness, dizziness and balance problems, and hearing loss. Fatigue is also a common and bothersome symptom as MS progresses.

Mr. Calabrese presently suffers from a number of these symptoms, including numbness on the left side of his body, pain in his back and legs, tingling in his legs and feet, problems walking and blurred vision. Due to the medical care he presently receives, however, he is ambulatory and is able to function.

While there is no known cure for MS, there are treatments available to treat attacks, modify the course of the disease and treat the symptoms.

In the past, Mr. Calabrese has suffered from attacks so severe that he required hospitalization and intravenous cortisone. These treatments limit the severity of those attacks.

Medications used to slow the progression of MS are taken on a long-term basis, including Interferons such as Rebif, which Mr. Calabrese presently self-injects three times per week. Mr. Calabrese also takes prescribed pain medication, Oxycodone, each day to help manage the constant pain. He is also prescribed Xanax to help him sleep.

Mr. Calabrese undergoes physical therapy regularly, including a rigorous planned exercise program each day, to modify the course of the disease and treat the symptoms.

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It is also essential to Mr. Calabrese's well-being that he have good nutrition and enough rest and relaxation, and that he avoid stress, fatigue and illness at all cost.

Mr. Calabrese will not likely receive comparable medical care and physical therapy in a prison setting. This is cause for concern, especially since a loss of bodily function can be irreversible and lead to a life in a wheelchair.

If Your Honor has any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Barry Gordon M.D.", with a stylized flourish at the end.

E. Barry Gordon, M.D.

**Physical Medicine and Rehabilitation
Associates of Staten Island
361 Edison Street
Staten Island, N.Y. 10306**

**Perry Drucker, M.D.
Jack D'Angelo, M.D.
Christopher Perez, M.D.**

**718-980-0101
Fax 718-980-1641**

May 11, 2012

**Honorable Carol B. Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201**

**Patient's Name: Anthony Calabrese
Date of Birth: 12/10/67**

Dear Chief Judge Amon,

I am writing to Your Honor on behalf of Anthony Calabrese. He has been under my care for chronic pain management since April 15, 2004. He has a history of chronic middle and lower back pain as a result of degenerative disc disease of his thoracic spine and lumbosacral spine as well as chronic neuropathic pain as a result of Multiple Sclerosis.

Multiple Sclerosis is a chronic progressive neurological disease that affects the brain and spinal cord caused by damage to the myelin sheath which is the protective coating that insulates our nerves.

Repeated episodes or attacks of inflammation occur in the brain, spinal cord and commonly the optic nerve and these attacks vary in location, duration and severity.

Since any part of the brain or spinal cord can be affected, common neuromuscular symptoms include weakness, loss of balance, numbness and abnormal sensation, pain, tremors or loss of coordination. Bowel and Bladder symptoms include constipation and stool leakage, difficulty urinating or defecating and incontinence. Ocular symptoms include blurry or double vision. Bulbar symptoms include slurred speech and difficulty chewing or swallowing. Neurological and Cognitive symptoms include decreased attention span, difficulty

concentrating, memory loss, depression, dizziness. Other symptoms include pain, numbness, tingling, burning or abnormal sensations in the limbs or face as well as chronic fatigue. Commonly, people under stress will experience exacerbations or worsening of their symptoms.

At this time, Mr. Calabrese suffers from several of these symptoms from Multiple Sclerosis including pain, numbness and tingling on the left side of his body, tingling in his legs, fine motor coordination and balance loss and episodic visual disturbance in addition to chronic middle and lower back pain however with continued medical treatment, his symptoms have been manageable and he has remained quite functional. While there is no cure for Multiple Sclerosis, treatments are available to modify the disease course and manage the resulting symptoms.

In the past, Mr. Calabrese had suffered Multiple Sclerosis exacerbations severe enough to warrant hospitalization and treatment with high dose intravenous steroids for up to a week at a time. If not for his access to immediate quality medical care, his resulting neurological sequela and loss of function could have been far greater.

At this time, Mr. Calabrese has been maintained on three time weekly injections of the interferon, Rebif, which he administers to himself, in order to slow the disease progression. He also has been maintained on Oxycodone, which he uses to manage his chronic pain in addition to Xanax for sleep. These medications must be continued on a consistent basis and failure to do so could have significant deleterious effects on Mr. Calabrese.

Mr. Calabrese also has performed physical therapy and currently performs an aggressive independent exercise program on a daily basis to maintain muscle strength and flexibility to preserve function. It is also important that he also maintain proper nutrition, get enough rest and relaxation and avoid stress as part of his regimen.

I do not believe that Mr. Calabrese will receive comparable medical care in a prison environment which can potentially result in permanent and irreversible neurological loss and functional impairment.

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Anthony Calabrese

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If Your Honor has any questions, please do not hesitate to contact me,

Very truly yours,


Christopher M. Perez, M.D.

Diplomate of the American Board of Physical Medicine and Rehabilitation

July 6, 2012

*The Honorable Carol B. Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201*

Dear Judge Amon:

My husband is scheduled to be sentenced by Your Honor on August 3, 2012. I am writing to Your Honor in the hope that you will be lenient with him.

Anthony and I have been a couple since we were 14 years old. We were childhood sweethearts then and continue to be sweethearts now, nearly 30 years later.

Our marriage nearly 20 years ago, has brought us four beautiful children, a daughter, Gianna, age 17, a daughter, Nicolette, age 15, a son, Peter, age 13, and a son Anthony, Jr., age 9.


Anthony is a loving and caring husband. Unlike many other men I hear about, he does not spend his nights out carousing with others. He is devoted to me, and I, in turn, am devoted to him. He is also a wonderful father. All of the children adore him. He is such an integral part of our lives. I, or should I say, we, don't know what we would do without him.

I am asking Your Honor to please allow him to remain home with us. My children and I will be devastated without him. But, aside from my own selfish reasons for wanting him to remain home, I also fear for his health. Anthony suffers from Multiple Sclerosis,

and I mean suffers. He is in constant pain. He has problems walking. He has problems sleeping. He suffers from numbness on the left side of his body. He has terrible pain in his back and legs and feet. He suffers from blurred vision. And, he has had terrible attacks at times which render him helpless and immobile. Were it not for the specialized and immediate care he receives when an attack strikes, he could be in a wheelchair.

I know my husband is sorry for his involvement and the predicament he has placed us in. If you could find it in your heart to be lenient with him, it would be a God-send to us all.

Sincerely,


Andrea Calabrese

Dear Judge Amon,

My name is Gionna Calabrese and I am Anthony Calabrese's daughter. I understand that my father is scheduled to be sentenced by you and that he may go to prison. So, I write with a very heavy heart and in the hope that you will allow him to remain home with us.

My Dad is always there for all of us. Whether we need help him to help us with our homework, to be there for a special event at school, to watch us participate in sports, or to just lend us a loving and caring ear. He always has a happy face on for us - even though I know he suffers and is in terribly pain from his disease.

My Dad is also always there for my Mom. They make a wonderful couple, and our home and happy place to live in.

I am 17 years old and entering my senior year of high school. I can't envision my senior year without my Dad. And, it would break my heart to be without him. He has apologized to me numerous times for the predicament he has placed us in. And, I have told him numerous times back, not to worry. But, I know this weighs very heavily upon him.

While I am old enough to understand what is going on, I can't say the same for my younger brothers. They will really be lost without my Dad. He does everything with them, including coaching them in football which they love.

Please allow my Dad to stay with us. He won't let you down.

Sincerely,


Gionna Calabrese